

April 2, 1969

The Honorable Richard G. Kleindienst
Deputy Attorney General
Department of Justice
Washington, D.C.

Dear Mr. Kleindienst:

Yesterday, I was informed that the Department of Justice had decided to proceed with a new trial of James Miller. This was a tragic error which I am confident will be corrected if someone in the Department whose career is not involved in the prosecution takes a hard look at the facts.

On June 19, 1964, federal and state officials, accompanied by the press, arrested James Miller in his beauty shop in Milford, Connecticut. The charge was conspiracy to smuggle narcotics. The press reported that Miller was a "key cog in the New York Underworld," principal in the largest international narcotics smuggling ring ever "broken up." The announcement was attributed to Attorney General Robert Kennedy.

In fact, as the Government well knew, Miller was a legitimate businessman and was not and never had been a "key cog" in the New York or any other underworld. Four and a half years of negotiation and litigation followed, culminating most recently in the Second Circuit's reversal of Miller's 1966 conviction.

I have earlier stated, in a motion to the Court of Appeals, that the Miller case is the most inexcusable perversion of Justice in the recent history of the federal criminal process. I have not modified that view. Leaving aside all questions of fairness which have been raised in the past four and one-half years, I will sketch below the particulars of my proofs that (1) James Miller is innocent and numerous persons in the Department of Justice should know it; (2) The pursuit of an initial hunch has hardened over the years into total incapacity to think and has prevented responsible officials from investigating the guilt of those who actually committed the crime; (3) The crime was actually perpetrated by Mario Natalizio, Anthony DiPasqua, Rosario Ippolito and others. DiPasqua and Ippolito were well known to the Department as high level narcotics smugglers before 1963, yet during the period when this crime should have been investigated, they were apparently removed from the minds or the records of the Organized Crime Section.

In a letter to your predecessor, Mr. Warren Christopher, I requested an audience and urged a full scale review of the case, suggesting that the Department might want to clean out its closets before your administration took

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over. My request was denied, my suggestion disregarded. I now request a dismissal because the evidence of Miller's innocence and the incompetent investigation of the case is now so clear that a retrial will be (a) an inhumane imposition on Miller and his family, (b) a source of embarrassment to the Department, (c) a perpetuation of the present immunity of the racketeers who committed the crime, (d) a pointless proceeding, since there will almost certainly be an acquittal and, if not, further appeals until justice is finally found. If the evidence outlined below does not persuade you, I urgently request the assignment of an unbiased investigator, to whom I will in return for a modicum of cooperation, disclose virtually all the evidence in my files -- much of which has not yet been produced in court.

The story begins with the arrest, on October 10, 1963, on the Texas border, of Joseph Michael Caron, who confessed that three weeks before (September 21) he had delivered a cargo of heroin to an unknown man in Bridgeport, Connecticut; and that four weeks before that (August 22) he had delivered another load to the same man at the same place. Caron thought the man's name was "Frank." He described the transferee as weighing about 200 hundred pounds, about forty, five feet ten, and "Italian or Jewish . . . Roman nose, curly black hair, dark complexioned." Miller, six feet, weighs about 170, is neither Italian nor Jewish, does not have a Roman nose, and is light complexioned. Caron then selected the photo of a man named Frank Mancuso. -A few days later, he said of Miller's photos (having been shown three shots of Miller in a stack of eight or ten), they "look like him, but I can't be sure. I would like to see him in person." Four months later, Caron was shown Miller and told "When you see him let me know." He made no positive identification. Not until the next day, when shown Miller again, did Caron "identify" him.

After first swearing she had not seen the man in Bridgeport and couldn't identify him, and fully aware that her husband's freedom depended on his testifying against Miller, Mrs. Caron at trial pointed her finger at Miller.

There was virtually no other evidence at trial, except Caron's statement, made after twenty-three months of incarceration and during an intensive three day interrogation, that his boss, Rivard, had said "Frank" is a "hairstresser." Apart from this statement, the case against Miller was purely and simply an eye-witness identification case -- the kind of case which puts more innocent people in prison than all others combined, as the Government agents should have known.

Against the Caron identification of Miller, there are business records and sworn testimony of customers that he was working in his beauty shop at all times when Caron was transferring his cargo to the guilty man, both in August and September, 1963. The transfers, which took considerable time, both occurred in early afternoon, on normal working days, a twenty minute drive from Miller's place of business.

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Miller took a truth serum test from a prominent psychiatrist, Dr. G.H. Gerow, of Westport, Connecticut. Dr. Gerow is convinced, as a result of the test, that Miller is innocent.

Miller also took a polygraph test from Dr. Thomas McShane, head of the Department of Psychology, Pace College, formerly in charge of polygraphs for the FBI. Miller passed the test and convinced Dr. McShane that he is innocent.

According to the testimony of respected psychiatrists, Caron's identification testimony was worthless, his testimony attributing to Rivard the statement about "Frank" being a "hairdresser" was a fabrication "to a certainty," and Caron's misidentification of Miller was cemented into his mind by the incompetent administration of hypnosis, three months before trial, by none other than the federal prosecutor, Mr. William Butler.

In addition to quoting Rivard as saying "Frank" is a "hairdresser," Caron said, that Rivard had remarked that he had eaten steak in "Frank's" backyard. Testimony in court was uncontradicted that the Millers had never served steak in their yard and had never had a Canadian as a guest.

Lucien Rivard, now in prison, swore that he had never met nor heard of James Miller and had never said anything to Caron about a hairdresser. He offered to submit to a polygraph on these sworn statements.

Even if the above were not enough to establish Miller's probable innocence, there is much more, to-wit, proof beyond reasonable doubt that the crime was committed not by Miller but by one Mario Natalizio and his confederates.

Natalizio confessed to Miller in a tape recorded conversation in 1965 (which Mr. Henry Peterson, head of the Organized Crime Section, claimed as late as January, 1968, contained nothing which incriminated Natalizio -- proving either that Mr. Peterson can't hear, can't read, or can't be bothered). He also confessed in writing in July, 1967, and orally, in great detail, to two private investigators, in August, 1967. He since has repeatedly admitted that he committed the crime, and his underworld associates are well aware that he, not Miller, is the guilty party.

Natalizio perfectly fits the description Caron gave of the culprit three weeks after the event. He gave Government agents a written statement denying he had been in Bridgeport in August and September, 1963, and told numerous other witnesses to lie for him and say that he had not left Miami. He explained that he needed a false alibi because he had "been smuggling gold." He has since admitted under oath that he lied to the Government and that he was in Bridgeport in the summer of 1963.

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There is ample other evidence corroborating Natalizio's guilt and implicating other narcotics smugglers:

(1) Roger Beauchemin, Rivard's courier on a delivery to Flint, Michigan, three weeks before Caron's first delivery in Bridgeport, testified that the man in charge of receiving his cargo in Flint was referred to by Rivard as "Frank" and answered to the name "Frank". This man he positively identified as Salvatore Giglio, (high level narcotics trafficker). Beauchemin also testified that he helped load the narcotics into a 1958 Buick bearing Florida license plates.

(2) Assistant U.S. Attorney William Butler admitted in Court that one of the participants in Bridgeport was believed to have been Salvatore Giglio.

(3) Natalizio's landlord during 1963, and the landlord's wife, testified that Natalizio, who had confessed to two private detectives that he had done the job with "two men on the lam", had in fact lived with two fugitives in Miami, one of whom was Anthony DiPasqua (a high ranking narcotics smuggler associated with Rivard and Giglio). Giglio had made visits to Natalizio and the other two men and had held secret conferences with them, after which Natalizio and one of the others would make trips. In mid July, 1963, after a visit from Giglio, Natalizio and the other fugitive, who went under the name "Sabbatini" (later identified as Rosario Ippolito), borrowed money to go "north on a score", which they said would take them, among other places, to Bridgeport, Connecticut. They made the trip in Sabbatini's green 1958 Buick bearing Florida license plates. They returned toward the end of August, and repaid the loan. Natalizio said that they had been both to Flint, Michigan and to Bridgeport, Connecticut. About a week later, another trip was made to Bridgeport. This time, both fugitives ended up, along with Natalizio, in Bridgeport, where they stayed for about two weeks. Near the end of September they returned to Miami. Before they came back, however, Natalizio asked his landlord to carry back for him an eight-inch stack of cash. A month or so after they returned to Miami (not long after Caron had been arrested on the Mexican border and had confessed), Natalizio told his fugitive friends to "screw" and they moved out immediately, leaving some of their belongings. Natalizio then induced several people to lie for him and to state that he had never left Miami in the summer or fall of 1963. His explanation was that he and the fugitives had been "smuggling gold" on their trips north.

(4) Charles Schnee submitted affidavits relating that he had seen Natalizio in Bridgeport in August and September, 1963, and that in November, 1963, Natalizio had offered him \$500 to extract registration cards from the Bridgeport and Fairfield Motor Inns (Sabbatini, according to Natalizio's former landlord, had stayed in the Fairfield during the September "score"). One of the names, Schnee recalled, "sounded like 'tini'", was an Italian name, and "could very well have been" Sabbatini. Natalizio later threatened that he "would get" Schnee if he revealed Natalizio's role in the registration removal attempt, and told Schnee to "take the fifth" if called before a grand jury.

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(6) Louis Schnee and Joseph Scala, both of Bridgeport, corroborated much of Charles Schnee's affidavit.

That is the merest sketch of the evidence corroborating Natalizio's guilt. Details are contained in Appellant's most recently filed appellate briefs, which are enclosed.

In August, 1967, I informed the United States Attorney in Connecticut, Mr. Jon Newman, that my sources indicated that Anthony DiPasqua (who had recently been arrested after being a fugitive for seven years on an old narcotics indictment) had been involved in the Bridgeport transfers with Natalizio. I repeated this in a letter to the Solicitor General and again, in January, 1968, in a conference in Washington with Mr. Peterson. Mr. Peterson did not know who DiPasqua was, despite the fact that he is listed, in the Department's submission to the McClellan Committee in 1963, as one of New York's largest narcotics traffickers, dealing, through Salvatore Giglio, with the Cotroni (Rivard) organization in Canada.

In September, 1968, I revealed, through testimony of an investigator for the Committee for Justice (a group of concerned citizens), extensive evidence regarding the identity and whereabouts of Harry Sabbatini (since identified as Rosario Ippolito, a parole violator, since 1961, from a New York murder charge, and a close associate, in narcotics smuggling, of DiPasqua and Angie Tuminaro). No one in the Government seemed to know or care anything about Sabbatini or his past or present criminal activities. Indeed, the Government has not yet seemed willing to concede that Sabbatini-Ippolito exists.

The evidence already produced in court is more than enough to convict Natalizio of the crime for which Miller was convicted. It is more than enough to convince any rational person that Miller was the victim of a fantastic miscarriage of justice. What is plain is that the persons responsible for the prosecution and conviction of Miller -- who were told about Natalizio's guilt in 1964 -- are desperately trying to avoid a confrontation with the truth and their own laziness or stupidity. They not only wouldn't investigate -- and won't now -- they won't even examine and consider the evidence produced by the defense.

I assert categorically and without the slightest fear of disproof that no person in the employ of the United States Government, has so much as a working familiarity with the facts of this case. I challenge the Government to produce any agent or any attorney who can relate with substantial accuracy and completeness the evidence which has been produced in open court in this case. I could recount proof after proof of the abysmal ignorance of the agents and attorneys in the Government of these facts. I referred above to Mr. Peterson's ignorance of the existence of one of the most significant narcotics traffickers in the northern hemisphere, despite several references in letters to the Department, to this very same man and his role in this case. United States Attorney Jon O. Newman, who is probably more knowledgeable about the case than anyone else

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in the Government, has repeatedly shown that he has not examined or considered evidence proffered by the defense. Just yesterday, when he informed me of the decision of some nameless persons in the Department to go forward with a re-trial, I suggested that he ought to listen to the taped conversations between Richard Lane and Mario Natalizio. He said that he had never heard that any such tapes existed. I pointed out that these very same tapes had been offered in evidence in a post-trial motion for new trial, excluded over his objection and made part of the record as an offer of proof. He still replied that he had been unaware that there had been any tapes.

Several knowledgeable people have expressed the opinion that the only way to explain the Miller case is the existence of an agent who is on DiPasqua's payroll. There is much precedent for this plausible theory. However, I am convinced, on the evidence which literally abounds, that there is a far more mundane proximate cause of the Miller monster -- namely, the sheer unwillingness of anybody in the Government to spend two weeks studying the case. Where the stakes are as high as they are here, such laziness is every bit as culpable as overt corruption, and equally destructive of the rule of law.

I became involved in this case because of its crude and simple injustice. As the evidence accumulated, however, I became equally concerned about the apparent inability of the Government -- in this case if not in others -- to conduct a decent investigation and to come up with proof against the guilty parties. It is shocking enough that the Government, with all its resources, prosecutes the wrong man; it is positively revolting to realize that in doing so the Government has been actively defending the mafia. It is time for the Department to get back in the business of prosecuting criminals, not persecuting hairdressers.

I am willing and anxious to explain or otherwise rebut any evidence or innuendo in Government files which might tend to corroborate Caron's identification of Miller. I have made this offer repeatedly. I have always been told that there is no such evidence or innuendo. If it now appears that I was misled, and there really is some undisclosed theory or rumor tending to cast doubt on Miller's claim of innocence, fundamental fairness, long denied in this case, requires an opportunity to be heard before a firm decision on retrial is made.

In closing, I repeat my request for a session with you personally, and with a capable subordinate who is willing to get on top of the facts in this case, and who owes no allegiance to anyone responsible for bringing it to its present shabby state. Such a session will save the Government both money and respect. It will also help to stop the trafficking in narcotics now carried on by DiPasqua, Sabbatini and Natalizio right in front of the glazed eyes of the Government.

Sincerely,

Steven Duke

SD/jnf
Enc.